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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1268

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION AND WELFARE

Appellant

v.

CORA McRAE, ET AL.

Appellees

MOTION OF COALITION FOR HUMAN JUSTICE FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE.

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Amicus Curiae, Coalition for Human Justice, moves for leave to file brief to support appellant, and says as follows:

1. Parties have not been contacted for consent because of time constraints, and thus consent of parties has not been obtained.

2. The Coalition for Human Justice is an unincorporated association of mothers who are welfare recipients and low-income people which has existed since 1974. The applicants interest is in representing the interests of the low-income persons who are not adequately represented by the professional organizations. The applicant has the perspective of the recipient of services that are here at issue.

3. The facts or questions of law which have not been, and will not be adequately represented by the parties, are as follows:

   a. The prevalence of the application of the criteria of economic need is not argued from the perspective of the recipient.

b. The trial court cited lack of money or education as the sole justification for abortion in many examples.
c. The need to balance health care against abortion must be put in perspective.
d. The question must be raised and decided as to whether enforced socio-economic deprivation and its immediate effects on poor women can justify government funded abortions.
e. The argument must be made that the personal impairment caused by poverty will not be relieved by a program of Medicaid funded abortions.

4. These questions are relevant because they provide a background for the Court to measure the Constitutional dimensions of the socio-economic deprivations and the attempted cure by abortion funding.

5. Applicant believes that the questions will not be presented by the parties because their perspective differs and the close interest and urgency of the applicants is not present in the parties.

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BRIEF AMICUS CURIAE OF
COALITION FOR HUMAN JUSTICE

The Coalition for Human Justice is an unincorporated organization, being in existence since 1974. Membership consists primarily of low-income people, welfare recipients, and persons from disadvantaged backgrounds. The sole concern of the organization is to give public attention to those issues which adversely affect the poor, and to advocate change in these areas.

The Coalition in concerned that the interests of low-income people are not adequately represented by professional organizations speaking in favor of abortion funding on behalf of the poor.

The question of welfare abortion funding is, in many ways, central to the larger issue of how our society intends to deal with the problem of poverty itself.

The appellees in this case argue that abortion is justified in proportionately higher numbers of Medicaid obstetrical cases than among the general population. And it is

noted that the increased maternal health problems of poor women may be directly attributed to those poverty-related conditions -- substandard housing, poor nutrition, and insufficient preventive medical care -- which adversely affect the physical and psychological well-being of virtually all economically disadvantaged people.

It is a fact that poverty diminishes life It lowers the average age of life expectancy, increases infant and maternal mortality rates, and isolates the disadvantaged from the mainstream of society. The poverty environment, in fact, breeds personal and social adversity at every level.

The most conspicuous defect in the lower Court's abortion mandate is that in theory it reduces a complex social and economic crisis to the status of a temporary medical disorder. The many ill effects of overcrowded slum housing with its lack of adequate heat and sanitation services will persist as long as needy persons are denied access to decent, livable homes. And so long as it is more profitable for the food marketing and health care delivery systems to favor the non-poor, dietary and medical deficiencies will remain a problem among the indigent.

If reality is not to be totally ignored, this Court must take into consideration the fact that the political demands of the poor have consistently focused on adequate food and housing, on jobs and education, and ultimately, on more equitable access to the legislative process. The lower Court, in basing a substantial part of its opinion on the tragic personal consequences of poverty, has, in effect, affirmed the legitimacy of these demands. It must likewise be noted that the social reforms sought by economically disadvantaged people have never included a right to abortion; restrictive abortion statutes themselves were never a target of Civil Rights era protest, and early efforts to repeal anti-abortion laws were, in fact, denounced by a number of civil and human rights leaders.* Public opinion polls have been remarkably consistent in showing that the lower the

financial status of a person, the less likely it is that the person will approve of legal abortion.**

Because a free abortion program fails even to acknowledge the material needs of welfare recipients, it is likely to be seen by many as just another way to take advantage of poor women. One can hardly blame low-income people for being suspicious if the federal government, which still has made no meaningful attempt to alieviate problems

*_The Black Panther_, July 4, 1970.
The Choice: The Issue of Black Survival in America, Samuel F. Yette, 1975 Berkley Medallion Books.
Commission on Population Growth and the American Future, separate statement of commission vice-president Grace Olivarez, March 1972.
Dick Gregory, _Ebony_ Magazine, Oct. 1971.
Planned Parenthood Conference, Kansas City, April 1971.
C. E. Vincent, C. A. Haney, and C. N. Cochrane, "Abortion Attitudes in Poverty-Level Blacks," _Semin. Psych_. 1970, pages 309-317.

** Judith Blake, "Abortion and Public Opinion," _Science_, February 12, 1971, pages 540-549.
DeVries and Associates Survey, March 7, 1975.
Gallup Poll, March 1976.
See also Michigan referendum on legalization of abortion, November, 1972. In only two counties did a majority vote in favor of abortion. They were Ann Arbor and Birmingham Hills -- the two wealthiest. Among inner-city poverty areas, the anti-abortion vote was 80% -- the highest in the entire state.

related to housing, jobs, education, day care services, and preventive medicine, now offers unlimited access to abortion precisely because these needs remain unmet.

Poverty itself is an economic condition. A court-ordered policy of Medicaid abortion reimbursements, therefore, has the effect of discrediting efforts to provide material assistance in that it allows abortions to be widely utilized in response to problems which are wholly economic and social in origin.* Clearly, implementation of the lower court's abortion ruling involves no escalation of efforts to reduce physical and emotional illness among women prior to pregnancy, nor among the general poverty-level population, and it does nothing to improve the chances for curative treatment for pregnant women who happen to suffer from these afflictions. By isolating pregnancy and birth as impediments to health, the Medicaid abortion program literally forces pregnant women to act as scapegoats for society's brutal, and often deliberate, neglect of the poor.

The theory that poverty-related health problems tend to jeopardize pregnancy outcome in welfare dependent women can be applied with equal validity to induced abortion procedures. A woman whose general medical condition is poor has least resistance to infection; pre-existing medical problems are more likely to remain undiagnosed in abortion than in on-going prenatal care, and early post-operative complications, such as heavy bleeding or hemorrhage, which are a possibility in all out-patient abortions, present the immediate need for emergency medical treatment that is least accessible to financially underpriveleged women.*

* *Doe v. Bolton, 410 US*

* *Faulty or inaccurate diagnosis, and/or allegedly negligent aftercare have been primary cause of damages sought in a number of medical malpractice claims against freestanding abortion clinics in the District of Columbia. See, for example, DC Superior Court civil actions cited below: CA 3226-72 Tibbs v. Preterm, uterine rupture, hemhorrage, hysterectomy required; CA 3048-74 Reany v. Preterm, inadequate aftercare, post-abortion sickness and hospitalization; CA 3817-74 Doucette v. Preterm, serious illness after abortion; CA 2917-76 D'Angelo v. Preterm, infection, misdiagnosed continuing pregnancy; CA 3214-75 Johnson v. Preterm, perforation of uterus and of cervix, refusal to provide suitable aftercare, hysterectomy; CA 7603-76 Caballero v. Preterm, misdiagnosed ectopic pregnancy, abortion, and massive, permanent brain damage; CA 2631 Sponaugle v. Preterm, abortion, IUD not removed, chronic infection and total abdominal hysterectomy; CA 7902-76 Lee v. Preterm, misdiagnosed ectopic pregnancy at time of abortion; CA 13195-78 Land v. Preterm, rupture of uterus, massive bleeding, improper care, hysterectomy; CA 11799-79 Zimmerman v. Preterm, abortion, laceration and perforation of uterus; CA 9761-73 Wheeler v. Summit, perforation of uterus; CA 6362-75 Rawley V. Summit, septic abortion; CA 10445-77 Wheaton v. Summit, improperly diagnosed ectopic pregnancy; CA 4464-77 Shinney v. Hillcrest, incomplete abortion; CA 7045-78 Jones v. Jackson and McLeod (Hillcrest), wrongful diagnosis of pregnancy, two abortion procedures on non-pregnant woman; CA 3533-75 Vallejo v. Sherman, refusal to provide aftercare, hemorrhage following incomplete abortion; CA 1178-75 Quinn v. Sherman, misdiagnosed incomplete abortion; CA 2834-78 Jacobs v. Women's Medical Center, refusal to respond to patient complaints, incomplete abortion, perforated uterus, acute pelvic inflammatory disease; CA 9996-79 Mitchell v. Laurel Clinic, incomplete abortion; CA 5783-75 McDowell v. Sherman, patient death due to infected and incomplete abortion; CA 466-79 Dhillon v. Laurel Clinic, septic and incomplete abortion; CA 5666-75 Williams at el v. Laurel Clinic, death of abortion patient.*

There are many other Superior Court civil suits

The medical establishment itself cannot be held entirely blameless for the double standard in health care that exists in this country today. Because of a tendency on the part of doctors (particularly in public institutions and teaching hospitals) to view medically indigent women as high-risk maternity patients, the poor receive Caesarean sections in disproportionately high numbers, are more frequently subjected to unnecessary hysterectomies, and account for the vast majority of sterilization abuse cases.** Low-income women have likewise been the targets for experimental birth control devices and drugs, as revealed in a number of articles dealing with the Dalkon Shield, an I.U.D., and the injectable long-term contraceptive, Depo-Provera.***

These and other violations of the medical rights of poor women demonstrate that the above-average health risks associated with poverty may be compounded by irresponsible behavior on the part of medical professionals as well as by governmental neglect.

Directly related to the controversy over financial deprivation as a measure of abortion "need" is the question of voluntarism. Most corrective surgery is done for objective reasons -- reasons related to a condition that can be directly observed (i.e. appendectomy, tonsilectomy, etc.). Abortions, however, are done most often for subjective indications, involving a patient's

involving incomplete and/or septic abortions; and a number of additional claims similar to these have been filed in US District Court in Washington.

** *"Epidemic of Caesareans,"* Seven Days, *May 5, 1978;* Adrienne Rich, Of Woman Born, *New York, Norton 1976;* Relf v. Weinburger, *US District Court, Washington, civil action no. 73-1557 and 74-243.*

*** *See* Mother Jones *Magazine, Nov. 1979, for example.*

environment, her attitude towards giving birth, and -- sometimes, most importantly -- her response to the attitudes of others. Thus the decision to undergo an abortion is one that is undeniably influenced by outside pressures.

Since it is obvious that women do not submit to abortions with cheerful enthusiasm or out of grateful obedience to Roe v. Wade, it should likewise be apparent that abortion is never a truly voluntary form of family planning in the sense that it parallels the decision of a non-pregnant woman to use contraception as a means to postpone or regulate childbearing.

Direct coercion takes many forms. A woman who is denied access to (or information about) alternatives is given no choice; a male partner or a member of a woman's immediate family may threaten reprisal if an abortion is refused; and anti-abortion activists have charged -- with considerable validity, it seems -- that professional clinic counselors are often trained to manipulate insecurity in ambivalent clients.

The possibility of compulsory abortion has likewise been raised on a number of occasions. At a White House Conference on Food and Nutrition, held in Washington in December of 1969, a special medical panel set up to address the issues of "welfare" and "health" recommended that Congress enact a law providing mandatory abortion for any unmarried woman found to be within the first three months of pregnancy, and mandatory sterilization of any such woman giving birth out of wedlock for a second time. The panel, which included such notable authorities as Dr. Charles U. Lowe of HEW's National Institutes of Health and the late Dr. Alan Guttmacher, president of Planned Parenthood-World Population,

finally withdrew the proposal because of objections by civil rights workers.*

In July of 1971, a 22-year-old mental patient was ordered by a judge to undergo an abortion despite the fact that she wished to keep her baby. The abortion was authorized on the grounds that continuation of pregnancy would harm the "physical and mental health" of the woman.** And, more recently, the chairman of the Texas State Board of Human Resources, an agency charged with overseeing the state's welfare assistance program, called for mandatory abortions and sterilizations of welfare mothers to prevent them from giving birth to children they cannot afford.***

But probably the most subtle, and the most widespread, form of coercion is economic need. Its application has become so prevalent, so "acceptable" in some circles, that the appellees in this case actually cite such circumstances *in favor* of federal abortion funds.****
Both opponents and proponents generally concede that abortion is the world's most primitive, dangerous, and expensive form of birth control, and that it should never be adopted as a preferred family planning method. As part of federal welfare assistance, the funds used to reimburse abortion providers are subtracted from money

* *Yette, op cit, pages 111-116.*

***San Jose News, July 7, 1971; Superior Court case no. LPS 21985, filed 7-2-71.*

****Washington Post, February 28, 2980, page A9.*

**** *See McRae v. Harris, pages 102, 113, 123, 124, for examples in which lack of money or education amounts to the sole justification for abortion.*

appropriated for anti-poverty programs; no extra allowance has ever been made available for this purpose. Thus the financial beneficiaries of Medicaid abortions are the vendors themselves, and not the needy, and such virtually unconditional subsidies give abortion clinic owners and operators a financial incentive to recruit poor women as clients. It thus encourages them, in a sense, to capitalize on the personal tragedies of poverty.

Abortion, in fact, does nothing whatever to redistribute work or wealth; it does not improve the status of the low-income woman in any way.

The nation's continuing failure to seek and implement positive, effective, political measures to improve the lives of poor people, coupled with an attitude held by many in the health care professions that poverty (and its inevitable harm to its victims) can be treated as a biological defect, has produced a classic "catch-22" situation: As long as the poor are denied access to the basic necessities of life, abortion providers will claim that poor women are medically unfit to procreate. And as long as abortions are -- in any way -- justified by social neglect, genuine economic reform will be seriously jeopardized.

Every time a pregnant woman is given an abortion because she can only hope to raise her child in slum housing, because she cannot afford adequate clothing, food, or transportation, or because she has been denied a fair chance at education, employment, and day care services, we make it less likely that any woman can hope for change in these areas. And thus we further institutionalize the oppression of the underclasses. Precisely because this kind of "medically necessary" abortion accomodates

political injustice, it serves to perpetuate it.

In no instance is the utter obscenity of America's disregard for the poor more clear than in the case of an AFDC mother whose child has died of pneumonia. While heat in her apartment might have prevented the baby's sickness, the knowledge that she could instead have had a free legal abortion is of no consolation whatever. The moral outrage of this nation, and of the Court, must be directed -- not at the fact that such children are born -- but at the circumstances under which many die, and at the deplorable conditions which continue to threaten the lives of millions of underpriveleged human beings, which destroy hope and incentive, and which breed violence, fear, and despair.

This Court in 1977 (Maher v. Roe) ruled that the states (and, by implication, the federal government) may favor childbirth over abortion. The decision of the lower court in McRae v. Harris says, in effect, that this is not the case where the poor are concerned. If the latter opinion is upheld, it will impose a double standard more divisive than any in recent history. In no way is this action a simple matter of whether or not Medicaid-eligible women should have the same access to abortion as do more affluent women who are able to afford, not only abortions, but virtually every other thing which poor people find themselves unable to purchase. Instead, the real question raised by this litigation is whether enforced socio-economic deprivation and its immediate effects on poor women justify government funded abortions -- all other factors being unequal.

As shown by testimony of plaintiffs in McRae, poor physical and emotional health, as well as poor prognosis for treatment and recovery, are consequences of living conditions imposed on an entire class of people by an economic system which is undeniably unfair, and by a political system which is, in the minds of many, totally unaccountable to the poor.

The abortion policy sought by appellees in this case will neither bring about equality nor compensate for the lack of it. At best, it is an insincere approach to a grave human problem; at worst, it is a contemptible political move to avoid facing the problem by reducing the numbers of those people believed to personify the problem.

Amici urge that the Court find that the personal impairment caused by poverty will not be relieved by a program of Medicaid abortions, and that, indeed, the situation of poor women will be exacerbated by such a policy. Abortion is no more a gift to the poor than are those unfortunate circumstances which so often motivate it.

Respectfully submitted,

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